

DAC ZW

"PATENT"

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Reissue Application of: )  
HERMAN BUSTAMANTE et al. ) Group Art Unit: 2686  
REISSUE SERIAL NO. 09/662,741 ) Examiner: C. Appiah  
REISSUE FILING DATE: 14 September 2000 )  
REISSUE OF PATENT NO.: 5,809,431 )  
FOR: LOCAL MULTIPOINT DISTRIBUTION )  
SYSTEM )

**PETITION UNDER 37 CFR § 1.183 TO SUSPEND RULES**

**Mail Stop: Petitions**  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Applicant hereby petitions to suspend the requirements of 37 CFR § 1.175(b)(1), and in particular, the requirement that a supplemental reissue declaration must be signed by all the inventors.

The accompanying Statement sets forth proof of pertinent facts as to the unavailability of one of the joint inventors, Mr. Horen Chen, as well as the last known address of Mr. Chen.

A fee of \$400 is attached as required by 37 CFR 1.17 (f) in connection with this Petition.

The Commissioner is hereby authorized to charge any fees that arise in connection with

04/21/2005 CCHAU1 00000003 09662741

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400.00 0P

this filing which are not covered by the authorization enclosed, or credit any overpayment, to  
Deposit Account No. 02-0460.

Respectfully submitted,

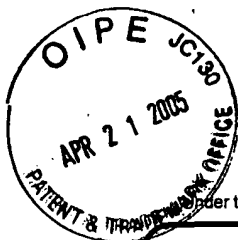
HERMAN BUSTAMANTE et al.



Dated: April 19, 2005

By: Jeffrey J. Lotspeich  
Attorney for Applicant  
Registration No. 45,737

**THE MAXHAM FIRM**  
750 'B' STREET, SUITE 3100  
SAN DIEGO, CALIFORNIA 92101  
TELEPHONE: (619) 233-9004  
FACSIMILE: (619) 544-1246



PTO/SB/17p (11-04)

Approved for use through 07/31/2007. OMB 0651-0031  
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**PETITION FEE**  
**Under 37 CFR 1.17(f), (g) & (h)**  
**TRANSMITTAL**

(Fees are subject to annual revision)

Send completed form to: Commissioner for Patents  
P.O. Box 1450, Alexandria, VA 22313-1450

Application Number	09/662,741
Filing Date	14 September 2000
First Named Inventor	Herman Bustamante
Art Unit	2686
Examiner Name	C. Appiah
Attorney Docket Number	2796-02

**Enclosed is a petition filed under 37 CFR 1.183 that requires a processing fee (37 CFR 1.17(f), (g), or (h)). Payment of \$ 400 is enclosed.**

This form should be included with the above-mentioned petition and faxed or mailed to the Office using the appropriate Mail Stop (e.g., Mail Stop Petition), if applicable. For transmittal of processing fees under 37 CFR 1.17(i), see form PTO/SB/17i.

**Payment of Fees** (small entity amounts are NOT available for the petition fees)

☐ The Commissioner is hereby authorized to charge the following fees to Deposit Account No. 02-0460 :  
☐ petition fee under 37 CFR 1.17(f), (g) or (h) ☒ any deficiency of fees and credit of any overpayments  
Enclose a duplicative copy of this form for fee processing.

☒ Check in the amount of \$ 400.00 is enclosed.

☐ Payment by credit card (Form PTO-2038 or equivalent enclosed). Do not provide credit card information on this form.

**Petition Fees under 37 CFR 1.17(f): Fee \$400 Fee Code 1462**

For petitions filed under:

- § 1.63(e) - to accord a filing date.
- § 1.57(a) - to accord a filing date.
- § 1.182 - for decision on a question not specifically provided for.
- § 1.183 - to suspend the rules.
- § 1.378(e) - for reconsideration of decision on petition refusing to accept delayed payment of maintenance fee in an expired patent.
- § 1.741(b) - to accord a filing date to an application under § 1.740 for extension of a patent term.

**Petition Fees under 37 CFR 1.17(g): Fee \$200 Fee Code 1463**

For petitions filed under:

- § 1.12 - for access to an assignment record.
- § 1.14 - for access to an application.
- § 1.47 - for filing by other than all the inventors or a person not the inventor.
- § 1.59 - for expungement of information.
- § 1.103(a) - to suspend action in an application.
- § 1.136(b) - for review of a request for extension of time when the provisions of section 1.136(a) are not available.
- § 1.295 - for review of refusal to publish a statutory invention registration.
- § 1.296 - to withdraw a request for publication of a statutory invention registration filed on or after the date the notice of intent to publish issued.
- § 1.377 - for review of decision refusing to accept and record payment of a maintenance fee filed prior to expiration of a patent.
- § 1.550(c) - for patent owner requests for extension of time in *ex parte* reexamination proceedings.
- § 1.956 - for patent owner requests for extension of time in *inter partes* reexamination proceedings.
- § 5.12 - for expedited handling of a foreign filing license.
- § 5.15 - for changing the scope of a license.
- § 5.25 - for retroactive license.

**Petition Fees under 37 CFR 1.17(h): Fee \$130 Fee Code 1464**

For petitions filed under:

- § 1.19(g) - to request documents in a form other than that provided in this part.
- § 1.84 - for accepting color drawings or photographs.
- § 1.91 - for entry of a model or exhibit.
- § 1.102(d) - to make an application special.
- § 1.138(c) - to expressly abandon an application to avoid publication.
- § 1.313 - to withdraw an application from issue.
- § 1.314 - to defer issuance of a patent.

  
\_\_\_\_\_  
Signature

Jeffrey J. Lotspeich, Esq.

Typed or printed name

April 19, 2005

Date

45,737

Registration No., if applicable

This collection of information is required by 37 CFR 1.17. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 5 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



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REISSUE FILING DATE: 14 September 2000 )  
REISSUE OF PATENT NO.: 5,809,431 )  
FOR: LOCAL MULTIPOINT DISTRIBUTION )  
SYSTEM )

**STATEMENT OF FACTS IN SUPPORT OF**  
**PETITION UNDER 37 CFR § 1.183 TO SUSPEND RULES**

**Mail Stop: Petitions**  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

This Statement is made to the facts that are relied upon to establish the unavailability of the  
non-signing inventor, Mr. Horen Chen.

### Statement

1. On March 14, 2005, the undersigned had a telephone conversation with Mr. Horen Chen. The need for his signature on the inventor declaration was explained to Mr. Chen. Mr. Chen indicated that he would sign the Declaration and asked for us to send him the necessary paperwork.

2. On March 21, 2005, Mr. Chen was sent the required documents via Overnight Express at the address that he provided. (See Exhibit A for the letter to Mr. Chen and the Overnight Express receipt). The documents which were sent to Mr. Chen included: the originally filed reissue application (specification, drawings, and associated new claims 6-32); the current version of the claims which reflected the amendments of April 10, 2002, January 16, 2003, June 20, 2003, and March 4, 2004; two page Declaration; and additional sheet (PTO/SB/52). (See Exhibit A for the Declaration sent to Mr. Chen).

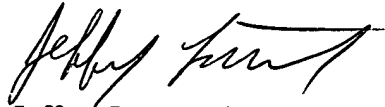
3. On March 22, 2005, Overnight Express delivered the documents identified in item 2 above to the residential address of Mr. Chen. Delivery required signature by the receiving party. (See Exhibit A for the delivery email confirmation.)

4. On April 12, 2005, a telephone call was placed to Mr. Chen. No one answered, and a voice message was left advising that we had not yet received the signed Declaration from him and inquired as to when we could expect the Declaration.

5. On April 15, 2005, a second telephone call was placed to Mr. Chen. During this call, Mr. Chen advised that he should be compensated for his efforts in reviewing the necessary papers and for signing the Declaration. When asked for the dollar amount that he would need in order to perform the necessary work, he stated that he did not know. Mr. Chen further advised that he was extremely busy and did not have time to review the documents, nor did he have time to assess how much money he would need to be paid to review and sign the Declaration. The urgency of this matter was explained to Mr. Chen, but he was steadfast in his refusal to sign the Declaration.

6. The last known address of Mr. Chen is: 19567 Chardonnay Court, Saratoga, California 95070.

Respectfully submitted,  
HERMAN BUSTAMANTE et al.



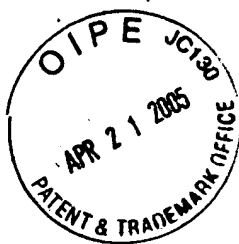
Dated: April 19, 2005

By: Jeffrey J. Lotspeich  
Attorney for Applicant  
Registration No. 45,737

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LAWRENCE A. MAXHAM

BLAKE A. O'NEILL  
JEFFREY J. LOTSPEICH



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A PROFESSIONAL LAW CORPORATION

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FACSIMILE (619) 544-1246  
URL <http://www.maxhamfirm.com>

EXHIBIT A

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TRADEMARKS  
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21 March 2005

### VIA OVERNIGHT EXPRESS

Mr. Horen Chen  
19567 Chardonnay Court  
Saratoga, California 95070

Re: Reissue of U. S. Patent No. 5,809,431  
Title: Local Multipoint Distribution System  
Reissue Application No. 09/662,741 – Re filed: 14 September 2000  
Our Ref. No.: 2796-2

Dear Horen:

Pursuant to our telephone conversation on 14 March 2005, enclosed is the inventor declaration for the above-identified reissue application. Also enclosed is the originally filed reissue application, and the associated new claims 6-32.

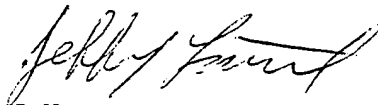
The claims have been amended on several occasions, as specified in the enclosed declaration. The current version of the claims, which reflect all of the changes made during the prosecution of this application, are presented in the enclosed document entitled "Current Status of Claims for Reissue of U.S. patent 5,809,431."

After you have reviewed the enclosed documents, please sign and date the reissue declaration on page 2 of that document, and return both pages of the signed declaration to our office using the enclosed envelope. Call Overnight Express at 800-683-7648, and they will pick up the envelope from your location. It would be appreciated if you could return the signed declaration to us by **6 April 2005** so that we can meet the Patent Office deadline in this matter.

We thank you in advance for your time. Please contact me should you have any questions.

Sincerely,

THE MAXHAM FIRM



Jeffrey J. Lotspeich

JJL/bmo  
Enclosures

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SHIPMENT NUMBER: 95005-100022-0		1 of 1
INTERNAL BILLING REFERENCE 2736-2 (McCarthy Tetrault)	ACCOUNT NUMBER 95005	
3rd PARTY BILLING ACCOUNT # (OPTIONAL)	DATE 03/21/2005	
FROM (YOUR NAME) Jeffrey J. Lotspeich	YOUR PHONE # (619) 233-9004	DELIVER TO Mr. Horen Chen
COMPANY The Maxham Firm		COMPANY Mr. Horen Chen
STREET 750 B Street	FLOOR OR SUITE 3100	STREET (WE CANNOT DELIVER TO PO BOXES) 19567 Chardonnay Court
CITY San Diego	STATE CA	ZIP CODE (REQUIRED) 92101



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SPECIAL INSTRUCTIONS: SIGNATURE REQUIRED

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EXHIBIT A



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EXHIBIT A

PTO/SB/51 (09-04)

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**REISSUE APPLICATION DECLARATION BY THE INVENTOR**

Docket Number (Optional)

2796-2

I hereby declare that:

Each inventor's residence, mailing address and citizenship are stated below next to their name.

I believe the inventors named below to be the original and first inventor(s) of the subject matter which is described and claimed in patent number 5,809,431, granted 15 September 1998 and for which a reissue patent is sought on the invention entitled \_\_\_\_\_

Local Multipoint Distribution System

the specification of which



is attached hereto.



was filed on 14 September 2000 as reissue application number 09/662,741

and was amended on 10 April 2002, 16 Jan 2003, 20 June 2003, and 4 March 2004.  
(If applicable)

I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to patentability as defined in 37 CFR 1.56.



I hereby claim foreign priority benefits under 35 U.S.C. 119(a)-(d) or (f), or 365(b). Attached is form PTO/SB/02B (or equivalent) listing the foreign applications.

I verily believe the original patent to be wholly or partly inoperative or invalid, for the reasons described below. (Check all boxes that apply.)



by reason of a defective specification or drawing.



by reason of the patentee claiming more or less than he had the right to claim in the patent.



by reason of other errors.

At least one error upon which reissue is based is described below. If the reissue is a broadening reissue, such must be stated with an explanation as to the nature of the broadening:

**See additional sheet**

[Page 1 of 2]

This collection of information is required by 37 CFR 1.175. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

(REISSUE APPLICATION DECLARATION BY THE INVENTOR, page 2)	Docket Number (Optional) <b>2796-2</b>
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All errors corrected in this reissue application arose without any deceptive intention on the part of the applicant.

Note: To appoint a power of attorney, use form PTO/SB/81.

Correspondence Address: Direct all communications about the application to:

☒ The address associated with Customer Number: 00616

OR

<input type="checkbox"/> Firm or Individual Name					
Address					
City		State		Zip	
Country					
Telephone		Fax			

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine and imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this declaration is directed.

Full name of sole or first inventor (given name, family name)  
**Herman Bustamante**

Inventor's signature	Date
----------------------	------

Residence Alamo, California	Citizenship U. S.
--------------------------------	----------------------

Mailing Address  
**164 S. Jackson Way  
Alamo, California 94507**

Full name of second joint inventor (given name, family name)  
**Horen Chen**

Inventor's signature	Date
----------------------	------

Residence Saratoga, California	Citizenship U. S.
-----------------------------------	----------------------

Mailing Address  
**19567 Chardonay Court,  
Saratoga, California 95070**

Full name of third joint inventor (given name, family name)

Inventor's signature	Date
----------------------	------

Residence	Citizenship
-----------	-------------

Mailing Address

☐ Additional joint inventors or legal representative(s) are named on separately numbered sheets forms PTO/SB/02A or 02LR attached hereto.



EXHIBIT A

## ADDITIONAL SHEET

PTO/SB/52

- (i) Claims 1 to 5 do not claim an invention specifically focused to a single cellular communication system as provided in the specification of the '431 patent;
- (ii) Claims 1 to 5 do not claim an invention relating to a method of initiating radio frequency transmissions between a base station and a subscriber station for a cellular communication system, as provided in the specification of the '431 patent;
- (iii) Claims 1 to 5 do not claim an invention relating to a communication signal configuration arrangement for a cellular communication system as provided in the specification of the '431 patent; and
- (iv) Claims 1 to 5 do not claim an invention relating to a subscriber station in a cellular communication system as provided in the specification of the '431 patent.

6 .

**Belinda Owens**

---

**From:** customercare@overniteexpress.com  
**Sent:** Tuesday, March 22, 2005 9:35 AM  
**To:** bowens@maxhamfirm.com  
**Subject:** Overnite Express Delivery Confirmation

EXHIBIT A



Here is the delivery confirmation that you requested:

Delivery Address: 19567 Chardonnay Court  
Saratoga, 95070

Delivery Name: Mr. Horen Chen

Delivery Company: Mr. Horen Chen

Received By: Horen

Delivery Time: 3/22/2005 9:34:00 AM

Shipment #: 95005-100022-001

Your Billing Reference (Optional): ~~2736-2~~ 2796-2 (McCarthy Tetrault)

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